

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4567 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHOWDHURY RAMESHBHAI MASHOTBHAI

Versus

STATE OF GUJARAT

Appearance:

MR SR SHAH for Petitioner
MR SR DIVETIA, APP for Respondent No. 1
MR RC JANI for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 20/03/97

ORAL JUDGEMENT

Rule. I have heard both the sides on merits at length and, therefore, I proceed to decide the matter finally by issuing Rule.

2. Chowdhury Ramjibhai Mashotbhai, original accused in Criminal Case No. 172 of 1996 on the file of Judicial Magistrate, First Class, Visnagar has filed the present

petition under Section 482 of the Code of Criminal Procedure seeking quashing of the said complaint lodged by respondent No. 2 - Chowdhury Jethabhai Laljibhai.

3. Respondent No. 2 - Chowdhury Jethabhai Laljibhai has lodged his private complaint of Criminal Case No. 172 of 1996 in the Court of Judicial Magistrate, First Class, Visnagar. It is his case that on 23rd October, 1976 the present petitioner i.e. accused in the case and the complainant had started partnership business in the name of "Raj Construction Company". A partnership deed was also executed between the parties but as subsequently the present petitioner-accused was elected to the District Panchayat, Mahesana, he retired from the partnership firm on 1st July, 1977 and in his place his brother - Becharbhai became the partner. It is further case of the complainant that the petitioner-accused is also doing another business of his own and it was carried on by him in the name of "Davol Transport Company". It is his further case that Raj Construction Company had purchased one truck bearing No.GTF 3205 in S.Y. 2033 i.e. on 1st November, 1976 for an amount of Rs. 68,000/- for the business of Raj Construction Company. Towards the price of the said truck, certain amounts were paid to the present petitioner. It is his further allegation that the business of Raj Construction Company was conducted at the office of Davol Transport Company and the accountants of Davol Transport Company Shri Shankar A Pandya and Shri Chhanalal Shah were writing the accounts of Raj Construction Company. It is his further claim that even after the retirement of the present petitioner, the said accountants were writing the accounts under his instructions and the accused petitioner was taking active interest in the business of Raj Construction Company and his brother Becharbhai was looking after the agricultural operations. It is his further claim that the accounts for the period running between 25.12.1978 and 1.1.1979 were settled and from the books of accounts it was found, as claimed by the present petitioner, that the amount of Rs. 1,05,687/- was payable by Raj Construction Company to Davol Transport Company. It is his further case that thereafter there was settlement between the parties and it was agreed that in lieu of the said amount of Rs. 1,05,687/- Raj Construction Company should pay Rs.95,000/- and in lieu of the said payment the truck bearing No. GTF 3205 was transferred in favour of the present petitioner. It is his further complaint that thereafter the complainant respondent No. 2 wanted the said truck and he approached the present petitioner and the petitioner had agreed to sell the said truck to him for an amount of Rs.

90,000/and he paid the same amount and got the said truck. It is his further case that thereafter he went through the books of accounts of Raj Construction Company and found that the balance of the amount shown as payable by Raj Construction Company to Davol Transport Company by the petitioner was incorrect and as a matter of fact the amount of Rs.23,327-34 was paid in excess to the present petitioner and the said amount was payable by him to the complainant. Therefore, in the circumstances he has filed a suit bearing Special Civil Suit No. 23 of 1981 to get the decree for that amount and other amount totalling Rs. 1,15,294/- in the Civil Court and that the said suit is pending.

4. It is his further case that on 22nd January, 1990 the present petitioner - accused gave a complaint to the police alleging that he was travelling by bus No. GRT 7817 between Mehsana and Raipur and at that time the accounts books belonging to Davol Transport Company which were kept by him in the bus were stolen when he had gone to the urinal at Visnagar S.T. Stand. It is the claim of the complainant - respondent No. 2 that the said complaint lodged by the present petitioner about the theft of his books of accounts is a false complaint and that the said complaint is lodged by him in order to see that his claim of Rs. 1,15,294/- in Special Civil Suit No. 23 of 1981 is defeated. Thus, he contended that the accused - petitioner before me has committed offences punishable under Sections 406, 422 and 424 of the Indian Penal Code.

5. The learned Magistrate was pleased to pass an order directing the police to carry out investigation under Section 156 (3) of the Code of Criminal Procedure and the petitioner has come before this Court to quash the said complaint lodged against him under the provisions of Section 482 of the Code of Criminal Procedure Code.

5. The present petition is filed by the petitioner before this Court in order to exercise the powers under Section 482 of the Code of Criminal Procedure. It is settled law that the High Court can exercise the powers under Section 482 of the Code of Criminal Procedure only in a case if the prosecution in question is an abuse of process of law and if the averments made in the complaint do not disclose any offence by giving face value to the averments made in the complaint. It is settled law that while considering the claim under Section 482 of the Code of Criminal Procedure, the High Court can not go into the niceties of appreciating the evidence. The averments

made by the complainant in his complaint must be accepted by giving face value to the same. Therefore, bearing this aspect in mind and the principles laid down by the Supreme Court in the case of Punjab National Bank Vs. Surendra Prasad Sinha, AIR 1992 SC 1815 and in the case of Madhavrao Vs. Sambhajirao, AIR 1988 SC 709, I proceed to consider the facts before me. But it would be proper to quote here the principles laid down by the Apex Court in both the cases. In the case of Madhavrao Vs. Sambhajirao, AIR 1988 SC 709, the head note is running as under :

"The legal position is well-settle that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. it is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

A case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. it is instant case, a complaint was filed for offences punishable under Sc. 406, 467 read with Sc. 34 and 120 B of the Penal Code. The property was trust property and one of the trustees was member of the settlor's family. The criminal proceedings were quashed by High Court in respect of two persons but they were allowed to be continued against the rest. it was held that the case in question was one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Therefore, the criminal proceeding had to be quashed."

In the case of Punjab National Bank Vs. Surendra

Prasad Sinha, AIR 1992 SC 1815, following principles are laid down :-

"Judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly."

In the instant case, it is the case of the complainant that the present petitioner had retired from the partnership on 1st July, 1977. No doubt, it is his further case that inspite of the said retirement, the present petitioner was taking interest in the partnership business of Raj Construction Company of which his brother had become a partner on his retirement. It is his further case that the accounts between the partners for the period running between 25.12.1978 and 1.1.1979 were settled and at that time as per the said settlement of accounts which was done by the present petitioner, the amount of Rs. 1,05,687/- was shown as payable by Raj Construction Company to the petitioner's firm - Davol Transport Company. The complainant admitted in his complaint that after the said settlement of accounts, he made the payment of Rs. 95,000/- which was accepted by the present petitioner in place of amount of Rs. 1,05,687/- and he took over the whole business of Raj Construction Company. It is his further case that after he took over the possession of the business of Raj Construction Company, he went through the books of accounts which had come in his possession and custody, on account of taking over the said business as a sole proprietor, he had found that, as a matter of fact, only Rs. 52,537/- was payable by Raj Construction Company to Davol Transport Company in place of Rs. 95,000/-. It is his further claim that after going through the account, he also found that there were other dues payable by Davol Transport Company to Raj Construction Company and it is his claim that the total amount which was receivable from Davol Transport Company was Rs. 1,15,294/-. He has further admitted in his complaint that for recovering Rs. 1,15,294/- he has also filed a Special Civil Suit No. 23 of 1981 in the Civil Court and that suit is pending between the parties. Now, in view of the above averments made by the complainant in his complaint, it would be quite clear that the real dispute between the parties is a civil dispute. This is a dispute arising on account of

the accounting between the present petitioner and the respondent No. 2. When the real dispute between the parties is a civil dispute, the recourse to the criminal prosecution by a party is a clear case of misuse of process of law.

6. No doubt, the complainant has further alleged that on 21.1.1990, the present petitioner has lodged a false complaint with the police of Visnagar Police Station alleging that his accounts books were stolen when he was taking journey from Mehsana to Raipur. Respondent No. 2 has filed a suit after going through the books of accounts which have come in his possession after he became the sole proprietor of Raj Construction Company. He has filed this suit on the basis of the entries in the books of accounts which are in his possession. He has clearly quoted in his complaint that after he got the possession of the books of accounts, he had studied the entries in the books of accounts and he has found that Raj Construction Company was liable to pay Rs. 52,537/- in place of Rs. 1,05,687/- shown by the present petitioner. Therefore, it is obviously clear from the averments made by the complainant in his complaint themselves show that the claim made by the complainant respondent No.2 before me in his suit bearing Special Civil Suit No. 23 of 1981 is based on the strength of the entries in the books of accounts which are in his possession and custody. It is very pertinent to note that from 1981 to 1990 the petitioner had never obtained an order from the Civil Court to seize and take in possession of the Court the books of accounts. It is not at all possible to accept the claim of respondent No. 2 original complainant that the petitioner has lodged the police complaint about the theft/loss of his books of accounts in order to defraud and defeat the claim of the present respondent No. 2. No prudent person can ever believe such a claim particularly in view of the fact that the suit is filed in the year 1981. The complaint is lodged by the present petitioner on 22.1.1990 and the present complaint is lodged by respondent No. 2 on 20.8.1996. Thus, in view of the averments made in the complaint itself and the circumstances as indicated above, it is very difficult to hold or believe that the complaint is disclosing any offence so that the trial of the offence must be allowed to proceed further. From the above discussed averments made in the complaint, it is quite clear that the real dispute between the parties is a civil dispute and the respondent No. 2 - complainant has already taken recourse to a civil proceeding. It seems more plausible and reasonable that the present complaint is lodged by respondent No. 2 in order to pressurise the present

petitioner and to take a vendetta against him.

7. The learned advocate for respondent No. 2 Mr Jani vehemently argued before me that the police have carried out investigation under the provisions of Section 156 (3) of the Code of Criminal Procedure Code and they have supported the claim of the complainant and he also cited before me the case of K.M. Mathew Vs. State of Kerala, AIR 1992 SC 2206. If the complaint itself is not disclosing any criminal offence, merely because the police happened to file a report that the complainant's case is correct, it cannot be said that this Court should not exercise the powers under Section 438 of the Code of Criminal Procedure. It is settled law that even in cases in which the police have sent report against the accused, it is open for this Court to exercise powers under Section 482 of the Code of Criminal Procedure to quash the said prosecution when it is of the opinion that the prosecution in question is a clear case of misuse of process of law. I have already pointed out material circumstances and facts averred by the complainant and which are accepted by me as averred by him and as discussed above they themselves clearly show that no criminal offence is disclosed by them. Therefore, merely because the police happened to complete the investigation, it cannot be said that the Court should not exercise the powers under Section 482 of the Code of Criminal Procedure. The case of K.M. Mathew Vs. State of Kerala, AIR 1992 SC 2206 does not support his contention because in that case inspite of the report by police, the learned Magistrate had directed that the prosecution against the Chief Editor should not be proceed with and he was excluded from the criminal prosecution and that order of the learned Magistrate was set aside by the High Court by exercising revisional powers and the said action of the High Court is reversed by the Apex Court.

8. Thus, from the material averments made in the complaint itself, it is clear that the prosecution in question is a clear case of misuse of process of law and, therefore, it would be unjust and improper to allow the continuation of the said prosecution. I, therefore, hold that this Court must exercise the powers under Section 482 of the Code of Criminal Procedure to quash and set aside the said prosecution. I, therefore, allow this application and I hereby order that Criminal Case No. 172 of 1996 on the file of Judicial Magistrate, First Class, Visnagar stands quashed and set aside. Rule is made absolute.
